

## Small Business Administration

## § 125.25

after receiving notice of the contracting officer's decision.

(b) *Suspension of action.* Upon receipt of notice of SBA's intent to appeal, the contracting officer must suspend further action regarding the procurement until the Secretary of the department or head of the agency issues a written decision on the appeal, unless the Secretary of the department or head of the agency makes a written determination that urgent and compelling circumstances which significantly affect the interests of the United States compel award of the contract.

(c) *Deadline for appeal.* Within 15 business days of SBA's notification to the CO, SBA must file its formal appeal with the Secretary of the department or head of the agency, or the appeal will be deemed withdrawn.

(d) *Decision.* The Secretary of the department or head of the agency must specify in writing the reasons for a denial of an appeal brought under this section.

### Subpart D—Protests Concerning SDVO SBCs

SOURCE: 69 FR 25269, May 5, 2004, unless otherwise noted.

#### § 125.24 Who may protest the status of an SDVO SBC?

(a) *For Sole Source Procurements.* SBA or the contracting officer may protest the proposed awardee's service-disabled veteran status.

(b) *For Competitive Set-Asides.* Any interested party may protest the apparent successful offeror's SDVO SBC status.

#### § 125.25 How does one file a service disabled veteran-owned status protest?

(a) *General.* The protest procedures described in this part are separate from those governing size protests and appeals. All protests relating to whether an eligible SDVO SBC is a "small" business for purposes of any Federal program are subject to part 121 of this chapter and must be filed in accordance with that part. If a protester protests both the size of the SDVO SBC and whether the concern meets the SDVO SBC requirements set forth in

§125.15(a), SBA will process each protest concurrently, under the procedures set forth in part 121 of this chapter and this part. SBA does not review issues concerning the administration of an SDVO contract.

(b) *Format.* Protests must be in writing and must specify all the grounds upon which the protest is based. A protest merely asserting that the protested concern is not an eligible SDVO SBC, without setting forth specific facts or allegations is insufficient. *Example:* A protester submits a protest stating that the awardee's owner is not a service-disabled veteran. The protest does not state any basis for this assertion. The protest allegation is insufficient.

(c) *Filing.* An interested party, other than the contracting officer or SBA, must deliver their protests in person, by facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period) to the contracting officer. The contracting officer or SBA must submit their written protest directly to the Director, Office of Government Contracting.

(d) *Timeliness.* (1) For negotiated acquisitions, an interested party must submit its protest by close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror.

(2) For sealed bid acquisitions, an interested party must submit its protest by close of business on the fifth business day after bid opening.

(3) Any protest submitted after the time limits is untimely, unless it is from SBA or the CO.

(4) Any protest received prior to bid opening or notification of intended awardee, whichever applies, is premature.

(e) *Referral to SBA.* The contracting officer must forward to SBA any non-premature protest received, notwithstanding whether he or she believes it is sufficiently specific or timely. The contracting officer must send all protests, along with a referral letter, directly to the Director, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or by fax to (202) 205-6390, marked Attn: Service-Disabled Veteran Status Protest. The